In The

Supreme Court of the United States

October Term, 1973

No. 73-5412

JOHN R. DILLARD and WILLIE WILLIAMS, individually, and on behalf of all other persons similarly situated,

Appellants,

v.

INDUSTRIAL COMMISSION OF VIRGINIA, THOMAS M. MILLER, Chairman, Industrial Commission of Virginia, M. EDWARD EVANS, ROBERT P. JOYNER, Commissioners of the Industrial Commission of Virginia, and AETNA CASUALTY AND SURETY COMPANY,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Virginia

BRIEF FOR THE APPELLEES, INDUSTRIAL COMMISSION OF VIRGINIA AND INDIVIDUAL COMMISSIONERS

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QUESTION PRESENTED

Whether, under the Virginia workmen's compensation scheme, the suspension of compensation benefits by an employer subsequent to an *ex parte* determination by the Industrial Commission that probable cause exists to believe that a change in condition has occurred constitutes a denial of due process of law to an employee receiving compensation.

STATEMENT OF THE CASE

The appellees agree in substance with the appellants' statement of the case.

ARGUMENT

The appellant, Dillard, was to receive compensation benefits "during incapacity" under an award of the Industrial Commission dated April 7, 1971 (Exhibit I, A. 11). The insurer claimed that Dillard was able to return to work as of June 1, 1971, and suspended payments under the outstanding award on June 2, 1971. The Industrial Commission heard the insurer's application on July 16, 1971, and Dillard's compensation benefits were reinstated since the Commission felt that he continued to have incapacity for work. The physician's letter upon which the carrier relied was, at best, prospective in its comment concerning Dillard's capacity to return to work (Dr. Sibley's letter, May 19, 1971, A. 14).

Subsequently, the Industrial Commission amended its Rule 13 (A. 44) to include language which required an employer or insurer to submit applications for change in condition under oath supported by "evidence which constitutes a legal basis for changing the existing award," such evidence to be reviewed by the Commission for the purpose of making a determination that "probable cause exists to believe that a change in condition has occurred."

This administrative determination of "probable cause" under Rule 13 is a prerequisite to acceptance of an application for hearing on the ground of change in condition. The amendment further declared that "benefits shall not be suspended" pending Commission review of the evidence and determination of probable cause to believe a change in condition had occurred.

In essence the relief sought by appellants is that Rule 13, rather than be declared void and unenforceable, be amended to require the continuation of benefits up to the time of hearing (and presumably a final decision) on the employer's

application for hearing.[1] However, in the absence of Rule 13, there would be nothing to prevent an employer or his insurance carrier from unilaterally terminating payment at any time. *Manchester Board and Paper Co., Inc.* v. *Parker,* 201 Va. 328, 111 S.E.2d 453 (1959).

As the Court below stated, "the very nature of due process negates any concept of inflexible procedure universally applicable to every imaginable situation" (A. 52). The limits of procedural due process must be ascertained by balancing the possible "grievous loss" to the individual against the governmental interest in summary adjudication. "Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action." *Goldberg* v. *Kelly,* 397 U.S. 254, 263 (1970), citing *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123 (1951), and *Cafeteria and Restaurant Workers Union, etc.* v. *McElroy,* 367 U.S. 886 (1961). Appellants' simplistic approach by which once having found a "property right," one is inexorably led to conclude that there must be a pre-termination hearing, is wide of the mark. Their argument ignores the fact that there are two "rights" in the same "property," in addition to a substantial governmental interest. An analysis of the workmen's compensation program in Virginia is essential in order to determine the factors which must be weighed so as to judge whether appellants have received "due process."

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[1] Both Dillard and Williams also pray that defendants be required to resume payments (A. 9 and A. 73, respectively). Presumably, this is no longer in issue. Dillard has settled his claim (A. 24, 25), while Williams has pursued his through the State court system, where the Supreme Court of Virginia denied review (Appellants' Brief, p. 6). Furthermore, Williams' complaint joined neither the employer nor his insurance carrier, at least one of which would be a necessary party if payment were to be ordered.

The first Workmen's Compensation Act of Virginia was adopted in 1918. Acts of Assembly of 1918, Chapter 400. The Act was recodified as Title 65.1 of Vol. 9 of the Code of Virginia (1950), as amended, in 1968. Acts of Assembly of 1968, Chapter 660. Pursuant to the Act, there is provided a system of compensation to an employee, injured in the course of his employment, which is a substitute for common law tort litigation. *Fauver* v. *Bell,* 192 Va. 518, 65 S.E.2d 575 (1951). No recoupment of payments wrongfully made to an employee is permitted. § 65.1-99 of the Code of Virginia (1950), as amended.[2] Furthermore, the employer is required to be current as to payments when the hearing is requested. Rule 13. The funds paid out under this system are private, not public, as is usually the case in Social Security, unemployment and welfare cases. Accordingly, the Commission has no economic "ax to grind." Rather its purpose is to ensure that the employee's interest is protected, see *Rust Engineering Co.* v. *Ramsey,* 194 Va. 975, 76 S.E.2d 195 (1953), while at the same time protect the rights of the employer. How, then, does Rule 13 serve this purpose?

The success of the workmen's compensation program in Virginia is based upon "voluntariness"—the voluntary undertaking of payment by an employer promptly after an industrial accident and the voluntary relinquishment by an employee of payments when he is no longer entitled to them. An analysis of the number of cases handled by the Commission bears this out. In the five year period from 1967 to 1971, the Commission approved from 19,000 to 21,000 memorandum of agreements annually.[3] Yet, the number of

[2] Citations to Title 65.1 of the Code of Virginia (1950), as amended, hereinafter will be cited as simply "§ 65.1-....."

[3] Answers to Interrogatories (5) (A. 36).

cases in which the Commission had to resolve disputes in the same five year period was 1,000 to 1,500, annually, where the parties failed to reach agreement in regard to compensation,[4] and 700 to 1,000, annually, where there was disagreement as to the continuance of payments.[5]

In 1973, there were 127,687 accidents reported. Of these only 2,387 opinions were rendered as a result of cases going to hearing.[6] Thus, it is seen that only a small percentage of the cases handled by the Commission involve disputes. Excessive litigation would undermine the entire system, which depends upon voluntary agreements to promptly assume payments and just as promptly terminate them at the appropriate time. See *The Report of the National Commission on State Workmen's Compensation Laws* (1972), pp. 99-100. ". . . [P]romptness appears to be one of the strengths of workmen's compensation." *Id.* at 118.

The inevitable result of requiring a pre-termination hearing will be the shattering of the delicate structure as it now exists. Since the employer or his insurance carrier cannot recoup benefits paid, it would be in the employee's financial interest to request a hearing even where he knew the employer was clearly right. The employee who was injured can be encouraged to prolong his time off work and be discouraged from rehabilitation if he has a financial incentive to await an evidentiary hearing to terminate his compensation. Conversely, if the employer cannot depend upon voluntary termination of benefits where there has been a change in condition, his cooperation in voluntarily undertaking to commence compensation promptly after an accident will be predictably lessened. So long as the carrier has the right to suspend payments upon a showing of probable cause, he is

[4] Answers to Interrogatories (7) (a) (A. 37).
[5] Answers to Interrogatories (7) (b) (A. 37).
[6] Addendum 1.

not reluctant to commence payments voluntarily. One of the most substantial disincentives to immediate voluntary and continued participation by the insurer would arise from the need for scrupulous investigation of each claim before entering into a memorandum of agreement—the basis for initial award of compensation. Incentive for early initiation of payments comes with knowledge that suspension can be expected to be handled on a voluntary basis. Thus, not only will there be considerably more disputes and hearings with respect to changes of condition and termination of benefits, but there will also be a large increase in disputes and hearings with respect to the voluntary undertaking of payment at the inception of the process. This is clearly not in the employee's best interest. As Judge Merhige said below in dissent: ". . . I cannot help but believe that the average working man in Virginia, who has sustained an injury resulting in a substantial reduction of his weekly income, suffers a grave and *immediate* loss" (A. 63) (Emphasis supplied). Accordingly, anything which postpones the onset of the payments may be extremely detrimental to the employee's interest.

Further, when the protections which are provided for the employee prior to a suspension of benefits are focused upon, it can be readily seen that the employee receives "due process."

a. Foremost is the requirement that the Commission find ". . . that probable cause exists to believe that a change in condition has occurred." Rule 13. This is of course a finding by an agency which has no economic interest in the outcome. cf. *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

b. Typically, the evidence that is being considered by the Commission is a medical report showing capacity of the employee to return to work. The physician renders an expert

medical opinion and, like the Commission, has no financial stake or bias in the outcome. In fact, the physician will often be one chosen by the employee, since § 65.1-88 provides that an employee may select a physician from a panel of three chosen by the employer.[7]

The opinion of the District Court suggested that the Rule 13 amendment was new and that the results of experience might be relevant (A. 51). A review of cases by the Industrial Commission has shown that this process of administrative determination has proven that the amended Rule 13 procedure is most effective in establishing a low percentage of cases in which the original administrative determination is not upheld upon evidentiary hearing.[8]

c. Appellants argue that Rule 13 is subject to abuse and that the employer can use suspension of payments to force an unfavorable lump sum payment upon the employee.[9] This ignores the fact that such settlement must be approved by the Commission. § 65.1-74. To approve such settlement the Commission must find that it is in the employee's best interest to do so. Rule 14 (Addendum 2). Furthermore, as the Court below pointed out, the employer may be assessed

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[7] Appellants discussed a number of cases which, it is argued, show that a hearing is necessary to resolve disputes (Appellants' brief, p. 24). It is significant, however, that such cases arose in 1971, prior to the amendment of Rule 13 to provide a "probable cause" finding.

[8] A review of 202 cases decided during the period of six months from July 1, 1972, during which time amended Rule 13 was in force, showed that compensation was reinstated in only 17 cases (8.4 per cent) after the evidentiary hearing.

[9] Appellants' brief, p. 23.

costs and attorneys' fees if he acted unreasonably. § 65.1-101 (A. 51).[10]

d. It is important to note that termination without recourse is not being suggested. What is in issue is the *temporary* suspension of benefits with the full right of recovery.[11] The Commission does not enforce its awards. Rather, enforcement is effected by an employee's filing his award or agreement in the Circuit Court of the county or city where the injury occurred and thereby reducing it to judgment. § 65.1-100. During the time that the payments have been suspended, the employee may of course avail himself of this opportunity.

In fact the workmen's compensation scheme in Virginia is (1) heavily weighted toward the protection of the employee and (2) exceeds the requirements of due process.

As previously stated, the employee's interest is, however, not the only one requiring protection. Any moneys given to the employee of necessity must be taken from the employer or his insurance carrier. Thus, there are competing private interests in the same "property." It is appellants' failure to recognize the employer's interest as independent

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[10] Judge Merhige questions the effectiveness of such assessments (A. 64). It is submitted that the regular assessment of such fees aids in securing strict compliance. That the Commission is not reluctant to utilize the tool is manifested by the fact that in the same volume of the Opinions of the Industrial Commission discussed by appellants (Brief, p. 24), on no less than eight occasions costs or fees were assessed.

[11] ". . . the worst possible effect of the procedure which plaintiffs attack as being lacking in due process would be that for a period of a few weeks until a hearing is held a claimant who is finally determined to be eligible for payments would have to live on his accumulated savings or, if he had no savings, would have to resort to relief. If he is eventually found to be eligible he will receive retroactively all the payments to which he was entitled." *Torres* v. *New York State Department of Labor*, 321 F.Supp. 432, 437 (S.D. N.Y. 1971), *aff'd.* 405 U.S. 949 (1972).

that spells a fallacy in their due process analysis.[12] For the same reason, *Goldberg* v. *Kelly, supra; Fuentes* v. *Shevin,* 407 U.S. 67 (1972); and *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1969), on which appellants ground their analysis, are not dispositive of the issue here.

Appellants' statement on page 11 of their brief highlights the error of their position: "They [employers and insurers] are administering funds which the state has directed to be *accumulated* and disbursed according to explicit and detailed statutes and regulations" (Emphasis supplied). On the contrary, there is no *fund* to be administered as in welfare and unemployment cases. The funds are *private*. If they are not spent for workmen's compensation benefits, they can be utilized for any other private purpose. Thus, apart from other distinctions between workmen's compensation and welfare,[13] *Goldberg* is not authority for requiring a pre-termination hearing in this case; in *Goldberg* only governmental funds were involved. Moreover, in *Goldberg* the government was a party to the proceedings in the sense that its funds were involved. Here of course the Commission, as previously stated, has no economic interest and is an unbiased referee.

Likewise, there are major distinctions between the instant case and *Fuentes* and *Sniadach*. In *Fuentes* although the government participated in the repossession of the goods there was no provision for meaningful review by the governmental agency prior to repossession. Additionally, the

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[12] Amici on the other hand addresses the distinction: "This Court has never determined whether an evidentiary pre-termination hearing is required, where, as here, there is not 'undisputed ownership,' (*Fuentes,* 407 U.S. at 86), but rather competing private claims to the property in question." Brief, p. 18.

[13] Workmen's compensation is an income maintenance scheme. The individual status with respect to need is irrelevant. Welfare payments are, of course, based upon need.

purchaser clearly possesses a greater property interest in the purchased goods than does the seller. Such is not the case here where there is a contractual claim (albeit sanctioned by law) over which there is a dispute as to whether one party to the contract is entitled to certain benefits. Again, in *Sniadach*, there was no meaningful governmental review prior to the issuance of the garnishment and, again, the person whose "property" was taken had a superior interest to that of the other disputant, who was a creditor seeking to obtain the debtor's wages.

In summary, the Commonwealth of Virginia has conceived a carefully structured and delicately balanced system whereby injured workers are compensated expeditiously and efficiently. The very life blood of the system is found in the resolution of disputes by agreement between employer and employee. Any alteration of the structure in such a way as to substantially increase litigation of claims, either with respect to undertaking payments or of terminating them, will have a deleterious effect upon its operation; and the employee will be the primary victim. It is respectfully submitted that the present state of the law in Virginia provides the best balancing of governmental and private interests so as to ensure that all parties receive "due process."

CONCLUSION

For the foregoing reasons it is prayed that the judgment of the Court below be affirmed.

Respectfully submitted,

INDUSTRIAL COMMISSION OF VIRGINIA

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CERTIFICATE OF SERVICE

I, Andrew P. Miller, a member of the Bar of the Supreme Court of the United States and counsel for the above named appellees, hereby certify that I have served three copies of the foregoing Brief for the Appellees, Industrial Commission of Virginia and Individual Commissioners, on John M. Levy, Esquire and George S. Newman, Esquire, 300 East

Clay Street, Richmond, Virginia 23219; Willard I. Walker, Esquire, Ross Building, Richmond, Virginia 23219; and J. Albert Woll, Esquire, General Counsel, AFL-CIO, 815 Fifteenth Street, N.W., Washington, D. C. 20005, on or before March 1, 1974. All parties required to be served have been served.

ANDREW P. MILLER
Attorney General of Virginia

ADDENDUM

ADDENDUM 1

COMMONWEALTH OF VIRGINIA

[LETTERHEAD OMITTED]

DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794
Richmond, Virginia 23214

February 12, 1974

From: Claims Division Of Industrial Commission

This is to certify that the Industrial Commission of Virginia had 127,687 accidents reported which resulted in the creation of 78,446 claim files during 1973.

The Claims Division approved 24,126 agreements and entered awards for same.

There were 2,387 opinions entered as a result of cases going to hearing.

The Claims Division received 1500 applications based on change in condition which were filed by the employers or insurance carriers for the purpose of suspending compensation payments. Under Rule 13 391 of the applications were rejected based on a finding of no probable cause, and 1109 cases were placed on the hearing docket.

C. G. James, Deputy Commissioner
Claims Division

CGJ:bcw

ADDENDUM 2

RULES OF THE INDUSTRIAL COMMISSION

Rule 1. *Hearings.*—A hearing held by the full Commission, a Commissioner, or Deputy Commissioner shall be conducted as a judicial proceeding in that all witnesses shall testify under oath, and a record of the proceedings shall be made. The Commission will not be bound by statutory or common law rules of pleading or evidence, nor by any technical rules of practice in conducting hearings, but will conduct such hearings and make such investigations in reference to the questions at issue in such manner as in its judgment are held adapted to ascertain and determine expeditiously and accurately the substantial rights of the parties and to carry out justly the spirit of the Workmen's Compensation Act; and to that end, hearsay evidence may be received.

The party requesting a hearing or requesting a review shall have the right to open and close, and, upon review, the parties shall be allotted twenty minutes to a side in which to present oral argument.

Subpoenas requested by the parties will be issued by the Commission and sent to the party requesting the same to be by him turned over to the proper officer for execution. The party requesting the subpoena shall be primarily liable for the officer's fee for serving the same.

In accordance with the provisions of § 65.1-94, the original hearing in all cases will be held in the county where the accident occurred. However, for mutual convenience, all parties concerned concurring, they may be transferred to any designated point. All reviews before the full Commission will be held at its offices in the City of Richmond.

Rule 2. *Continuances.*—Postponements of hearings will be granted only when it shall appear that, without the fault

of the party asking for same, material and irreparable injury may occur. Parties are, therefore, required to make every preparation possible and to appear at the time and place of hearing and proceed with the case.

Rule 3. *Additional Testimony.*—After the hearing of a case by a Commissioner, or Deputy Commissioner, the opinion and award may be reviewed by the full Commission upon the petition of any party at interest, but no additional testimony will be introduced upon review, and any petition for a reopening of the case and the taking of additional testimony will only be favorably acted upon by the full Commission where it appears to the Commission that such course is absolutely necessary and advisable and also where the party requesting the same is able to conform to the rules prevailing in courts of this State for the introduction of after-discovered evidence.

A formal petition shall be filed previous to the hearing upon review in all cases where such request is made with the Commission and a copy of the same furnished the opposite party, or his attorney. Such petition shall conform to those required in courts upon applications for the introduction of newly discovered evidence.

In no case will a petition requesting a re-opening of a case for the introduction of new testimony be considered, except at the time of the review before the full Commission.

Rule 4. *Willful Misconduct.*—If the employer or insurance carrier intends to rely upon the defense of "willful misconduct" under § 65.1-38 of the Act, it shall file with the Commission, previous to the hearing, furnishing a copy of the same to the employee or his attorney, a statement of its intent to make such defense, together with a statement of the particular act or acts relied upon as showing willful misconduct.

Rule 5. *Posting Notices.*—Every employer within the operation of the Virginia Workmen's Compensation Act shall post and keep posted, conspicuously in his plant, shop, or place of business usually frequented by his emloyees, notice of his compliance with the provisions of the Act. Such notice may be in writing or in print and shall follow substantially the form prescribed by the Industrial Commission.

Rule 6. *Evidence of Insurance to be Filed with the Commission.*—Every employer within the operation of the Act shall file with the Industrial Commission proof of his compliance with the insurance provisions (§ 65.1-103 and § 65.1-104) of the Act. A notice from the insurer (Form No. 45-F) certifying this fact will be received as acceptable proof.

Rule 7. *Self-Insurance by the State, its Municipalities and Political Subdivisions.*—Permission for self-insurance by the State and its political subdivisions, as well as the municipalities of the State, will be granted, upon application therefor, without submission of proof of financial ability and without deposit of bond or other security. However, provision must be made for the premium tax provided for in § 65.1-135 of the Act.

Rule 8. *Information Concerning Financial Condition of Self-Insurer.*—No record or any information concerning the solvency and financial ability of any employer acquired by a Commissioner or his agent by virtue of his powers under the Virginia Workmen's Compensation Act shall be subject to inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a Commissioner or his agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from him, in accordance with the provisions of the Act, shall continue to be paid.

Rule 9. *Liability and Requirements of Employer Carrying Workmen's Compensation Insurance.*—Every employer taking out a Workmen's Compensation Insurance Policy, or qualifying as a self-insurer, shall be subject to all the provisions of the Workmen's Compensation Act. This rule applies to all employers, regardless of the number of employees.

All employers shall post and keep posted a copy of this rule, in a place or places conspicuous to his employees. In unusual cases, where such posting is not possible, as where the employer has no fixed place of operation in the State, the rule must be made known personally to the employees affected.

This rule, in so far as it applies to employers who have less than five employees, at the time the Workmen's Compensation insurance becomes effective, shall remain in force only during the period of time covered by said insurance.

Rule 10. *Employees Subject to Act Unless Rejection Right Exercised.*—Every employee of employers who have complied with the foregoing requirements shall be subject to all the provisions of the Workmen's Compensation Act unless and until he notifies the Industrial Commission of Virginia that he elects not to be bound by the provisions of the Act, in which case the burdens are assumed as provided in § 65.1-44 of the Act.

Rule 11. *Waiting Period.*—If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

Rule 12. *Must Pay Awards Direct.*—All compensation due an injured employee or compensation awarded on account of death under the Virginia Workmen's Compensation Act must be paid direct to the beneficiary or beneficiaries. This ruling applies in cases in which the employee is represented by counsel, as well as in cases in which he has no representation.

Compensation awarded must be paid promptly and in strict accordance with the award issued by the Commission. Awards will provide for the attorney's fee in all cases in which the claimant is represented, and the employer or his insurance carrier will be directed to pay the attorney's fee to the attorney direct and to deduct same from the compensation awarded the claimant.

Rule 13. *Applications for Review on Ground of Change in Condition.*—Applications for review under § 65.1-99 of the Act must be in writing and state the ground relied upon for relief. Reviews of awards on the ground of a change in condition shall be determined as of the date of the filing of the application in the offices of the Commission, except as provided in paragraphs two and three hereof.

All applications for hearing by an employer or insurer under § 65.1-99 shall show the date through which compensation benefits have been paid. No application shall be considered by the Commission until all compensation under the outstanding award has been paid to the date such application is filed with the Commission. Except, that in any case in which the employee has actually returned to work or has refused employment (§ 65.1-63), medical attention (§ 65.1-88), or medical examination (§ 65.1-91), compensation may be terminated as of the date the employee returned to work or refused employment, medical attention or medical examination, or as of a date fourteen days prior to the date the application is filed, whichever is later. In such

cases the application will be considered and determined as of the date of return to work, or refusal, or as of a date fourteen days prior to the date the application is filed, whichever is later. All applications by an employer or insurer shall be under oath and shall not be deemed filed and benefits shall not be suspended until the supporting evidence which constitutes a legal basis for changing the existing award shall have been reviewed by the Commission, or such of its employees as may be designated for that purpose, and a determination made that probable cause exists to believe that a change in condition has occurred.

All applications for hearing by an employee on the ground of further work incapacity shall be considered and determined as of the date incapacity for work actually begins, or as of a date fourteen days prior to the date the application is filed, whichever is later.

Rule 14. *Compromise Settlements; Lump Sum Payments.* —All compromise settlement agreements shall be submitted to the Commission in writing in the form of a petition setting forth the matters in controversy; the proposed terms of settlement; the proposed method of payment, together with such other facts as will enable the Commission to determine if the best interests of the claimant will be served by approval thereof.

If the proposed settlement contemplates payment in a lump sum, the petition shall set forth in detail the facts relied upon to show that the best interests of the employee or his dependents will be served thereby.

The petition, prepared by the parties, shall be signed by the claimant and his attorney, if represented, and by the other parties, or their attorneys, and shall be accompanied by an original draft with six copies of the proposed order, properly endorsed.

Rule 15. *Filing of Agreements.*—All written agreements pertaining to the payment or termination of compensation shall be filed with the Commission immediately upon their execution.

Rule 16. *Advisory Committee.*—An advisory committee to the Industrial Commission is hereby established. The committee shall consist of six members, appointed by the Commission, for terms of three years each. The membership of the committee shall be composed of a representative of: employees, employers, the medical profession, the legal profession, the insurance industry, and the public. The committee shall elect its chairman, and it shall meet at least once each calendar year. A quorum of the committee shall be four members.

Rule 17. *Required Filing of Medical Reports.*—All medical reports received by any party in any proceeding in the Industrial Commission, shall, as soon as received, be forthwith filed with the Commission. In any contested pending claim copies of such medical reports shall be simultaneously forwarded to the opposing party.

The required filing of such medical report with the Commission shall constitute a required report and subject to provisions of § 65.1-127, Code of Virginia.